STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SHAWN LEON JENKINS,

Defendant-Appellee.

UNPUBLISHED
November 18, 2003

No. 240947
Washtenaw Circuit Court
LC No. 01-001356-FH

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Plaintiff Washtenaw County Prosecutor appeals by right the trial court's order granting defendant's motion to suppress evidence and dismiss the case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant moved to suppress evidence that he possessed a gun, claiming that the police lacked reasonable suspicion to make the investigatory stop that led to the discovery of the weapon.

At an evidentiary hearing, Officer Geoffrey Spickard testified that he and another officer were dispatched to a housing complex in a known high-crime area to investigate a report that a group of fifteen to twenty people were consuming alcohol in public and acting boisterously. Spickard testified that when he arrived, he witnessed a group of people, some in possession of alcohol, congregated outside in one of the common patio areas of the complex. Nonetheless, Spickard approached defendant – who was neither loud nor in possession of alcohol – where he was sitting with another male on some nearby steps leading up to one of the housing units. At the preliminary examination, Spickard testified that he approached defendant and the other male because he did not recognize them. At the evidentiary hearing, though, Spickard stated that he approached them because he recognized the other male as a resident of the corresponding unit.

Spickard stated that he began making general conversation with defendant about the gathering. Spickard testified that a woman emerged from an apartment that was in the housing unit defendant was sitting in front of and asked defendant who he was and why he was sitting on the steps. Spickard asked defendant if he lived in the complex, and defendant replied that he did not. Spickard asked defendant for identification, and defendant reached into his back pocket and

retrieved a state identification card. Spickard then used his personal radio to request a LEIN check.

Spickard testified that after he requested the LEIN check, defendant began acting nervously by repeatedly attempting to put his hand in his front pants pocket. Defendant then began walking away from the officers, at which point Spickard testified that he began walking alongside defendant and "encouraging" him to wait for the LEIN check results. Spickard stated that people in the area told defendant he could enter their homes. Defendant continued walking toward a parking lot in which the officers' patrol car was parked. Spickard testified that when they reached the lot, defendant continued walking toward another area of the housing complex. At that point, Spickard stated that he put his hand in the small of defendant's back and told him he was not free to leave.

The LEIN check revealed that defendant had an outstanding warrant for his arrest. As Spickard was handcuffing defendant, a gun fell from the waistband of defendant's pants.

After defendant was charged, the trial court granted his motion to suppress the evidence and dismiss the case. The trial court found that Spickard seized defendant at the time he asked for defendant's identification. The trial court noted that Spickard acknowledged that in his view defendant was not free to leave at that time and concluded that at that time, Spickard had no reasonable suspicion on which to base an investigatory stop.

We review a trial court's findings of fact on a motion to suppress for clear error and the ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

A brief investigatory stop short of arrest is a seizure implicating Fourth Amendment rights, and as such, is permitted only where a peace officer has a reasonable suspicion that criminal activity is afoot. *Terry v Ohio*, 392 US 1, 16; 88 S Ct 1868; 20 L Ed 2d 889 (1968). The investigatory stop must be justified by a particularized suspicion, based on some objective manifestation, that a person is, has been, or is about to be engaged in some type of criminal activity. The suspicion must be based on the totality of the circumstances presented to the officer. *People v Shields*, 200 Mich App 554, 557; 504 NW2d 711 (1993). In determining the existence of reasonable suspicion, the trial court should consider the objective facts and defer to the experience of law enforcement officers and their assessments of criminal modes and patterns of behavior. *People v Oliver*, 464 Mich 184, 196, 200; 627 NW2d 297 (2001). But an "inchoate" or "unparticularized suspicion or hunch" is an insufficient basis for reasonable suspicion. *United States v Sokolow*, 490 US 1, 7; 109 S Ct 1581; 104 L Ed 2d 1 (1989). When an officer approaches a person and seeks his voluntary cooperation through noncoercive questioning, there has been no restraint on the person's liberty, and no seizure has occurred. *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998).

Here, Spickard testified that he approached defendant in a public place and initiated general conversation about the gathering. Spickard claimed that the sole event that aroused his suspicion and prompted him to ask for defendant's identification was a woman opening a nearby door and asking defendant why he was there. When Spickard asked defendant if he lived there, he forthrightly told the officer that he did not. Because defendant was in a public area, a large gathering was underway, and defendant was not engaging in the conduct for which the officers were summoned to the area, we find no specific or articulable facts supporting a reasonable

suspicion that defendant was involved in criminal activity. See *Oliver*, *supra* at 193; *Nelson*, *supra* at 631. A defendant's presence in a high-crime area – even when coupled with departure from a known crack house – does not justify a reasonable suspicion. *People v Shabaz*, 424 Mich 42, 60-61; 378 NW2d 451 (1985). Certainly here, where defendant exhibited no signs of evasive or otherwise suspicious behavior, there was nothing on which to formulate a basis for a reasonable suspicion.

We additionally agree with the trial court that the officer's subsequent actions constituted a seizure. The undisputed objective evidence reflects that when defendant tried to leave the area, the officers followed him and continually told him to wait for the LEIN results. Finally, when defendant continued to attempt to leave, Spickard put his hand on defendant's back, steered him toward the patrol car, and ordered him to remain until he was notified of the LEIN results.

In suppressing the evidence and dismissing the case, the trial court relied on Spickard's subjective belief that defendant was not free to leave, contrary to *United States v Waldon*, 206 F3d 597, 603 (CA 6 2000) ("'The subjective intent of the officers is relevant to an assessment of the fourth amendment implications of police conduct only to the extent that that intent has been conveyed to the person confronted'"), quoting *United States v Rose*, 889 F2d 1490, 1493 (CA 6 1989), citing *United States v Mendenhall*, 446 US 544, 554 n6; 64 L Ed 2d 497; 100 S Ct 1870 (1980). But here, there is also objective evidence that defendant was well-aware that he was not free to leave. The most compelling evidence that defendant was seized was that although he attempted to walk away, the officers followed him, continually "encouraged" him to wait, and finally ordered him to remain. Although Spickard testified that his suspicions were further developed while the officers followed defendant, such after-acquired suspicions do not suffice to justify a seizure that has already occurred.

Where objective evidence supports finding a detention, the detention is an investigatory stop. An investigatory stop requires reasonable suspicion that criminal activity is afoot. Because Spickard seized defendant without the proper level of suspicion, the trial court correctly granted defendant's motion to suppress the illegally obtained evidence and dismiss the case.

Affirmed.

/s/ Richard A. Bandstra
/s/ Stephen L. Borrello